IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP.No.73/2005

National Insurance Co. Ltd. ..... Appellant
! through: Ms. Shantha Devi Raman, Advocate

VERSUS

$ Sh. Gagan Singh & Ors. ..... Respondents
^ through: Mr. Kanishka Gupta, Advocate for R-2
Mr. O.P.Goyal, Advocate for R-3.

RESERVED ON : 08-05-2007

% **D**ATE OF DECISION: 11-05-2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. Fight in the appeal is inter se the appellant and respondent no.2 the insurer and the insured respectively.

2. Appellant is aggrieved by order dated 16.9.2004, 1.10.2004 and 6.10.2004 passed by the learned Judge MACT effect whereof is that the appellant has been denied recovery rights against the owner.

3. I note that the last order challenged i.e. order dated

6.10.2004 is the award.

4. As would be evident from the facts noted hereinafter, Mr. A, lawyer engaged by the appellant is responsible for what has happened. He is guilty of having conducted the trial in a most negligent and unprofessional manner.

5. Before noting the relevant facts, I must painfully record that in nearly 9 out of 10 appellants under the MV Act 1988, in some form or the other, a callous approach and supine indifference of the lawyers appearing before the Tribunals is emerging.

6. Viz-a-viz the insurance companies, the problem which has emerged is that the lawyer impaneled seldom appears. The work is outsourced. The result is that the lawyer defending the proceedings is not answerable to the insurance company. The impaneled lawyer feels that he is immuned to any action. I have been informally informed by senior officers of the insurance companies that more often that not, due to political pressure, they are compelled to impanel lawyers with whom they find virtually impossible to deal with.

7. Those who are lucky to have political contacts and as a result thereof get impaneled by public sector undertakings, and get briefs, are answerable to the call of the their profession.

I hope and trust that in future, I would never be compelled to express my anguish in a judicial order.

8. Reverting to the facts of the case, a written statement was filed by the insurance company under the signatures of a lawyer, Mr. A. However, he remained negligent in not filing a Vakalatnama. Further, he outsourced the brief to a junior lawyer practicing in the district courts. The junior lawyer got no guidance from his senior colleague and was left in the sea.

9. To compound their problem, the claim petition was assigned to a court presided over by a Judge who has a reputation of being a conscious Judge who brooks no nonsense from the bar. The learned Judge is fairly strict in granting adjournments and tries to insure a speedy disposal of cases.

10. The result therefore was that the claim petition which was assigned to the court of the learned Judge on 16.4.2003 went on a fast track. Since service was already effected upon the parties before matter was received by the learned Judge on transfer from another court, she promptly framed the issues on 14.5.2003. Matter was listed for evidence of the claimant on 23.7.2003. Knowing the reputation of the learned Judge, claimant led his evidence. An official witness summoned by the

claimant did not appear. The learned Judge issued bailable warrants to secure his presence. The said witness was examined on the next date. Two further witnesses were examined. Evidence of the claimant was closed on 29.4.2004.

11. Matter was listed for 23.7.2004 for evidence of the respondents. On said date none appeared for the respondents. No witness was present when matter was called at 11.30 A.M. Matter was taken up at the second call. Informing that the appellant intended to move an application, but not stating what the application was, appellant got the matter adjourned to 16.9.2004.

12. On 29.7.2004, an application was filed under Section 151 CPC under signatures of Mr. A, the Advocate. It was prayed in the application that the claimant be recalled for cross examination. The said application was listed for arguments on 16.9.2004.

13. The application in question which is at page 113-117 of the record of the learned Trial Judge makes a sorry picture.

14. A two page application is supported with the affidavit of the counsel. The affidavit has been placed after the first page of the application, meaning thereby it has been sandwiched in between page 1 and page 2 of the application.

15. On 16.9.2004, learned Judge passed an order dismissing the application noting that there was no Vakalatnama on record issued by the Insurance Company in favour of Mr.A.

16. I would have expected the learned counsel to have got the matter adjourned by a day. He could have obtained a Vakalatnama, validating the acts committed by him i.e. the act of filing the application which sought recall of the claimant for further cross examination.

17. After dismissing the application and noting that no witness was summoned by the insurance company, mater was listed for arguments on 22.9.2004.

18. On said date, Mr. A appeared. He started arguing the matter (as noted in the order dated 22.9.2004) urging a right to recall the claimant. Learned Judge was pleased to note that the counsel could not make any submissions pertaining to an application which was disposed of on 16.9.2004.

19. Unfortunately, Mr. A persisted with his defaults evidenced by the fact that on the next date notified i.e. 29.9.2004 he moved an application under Section 170 b of the MV Act. At that stage, he filed a Vakalatnama executed by an unknown person in his favour.

20. The Vakalatnama which is available at page 279 of the record of the Tribunal does not bear the seal of the appellant. It does not disclose the designation or even the name of the officer who has signed the Vakalatnama. What could be worse? Mr. A has not even bothered to sign the Vakalatnama signifying his acceptance as the counsel for the insurance company.

21. The net result was that the learned Trial Judge penned an order dated 29.9.2004 noting aforenoted facts and listed the matter for orders the next date.

22. Surprisingly Mr. A did not correct himself. He did not obtain a fresh Vakalatnama recording as to who was the executant thereof. He did not bother to obtain the seal of the appellant on a fresh Vakalatnama. He did not bother to even sign the Vakalatnama already filed, of course, with the leave of the court.

23. The result was that vide order dated 1.10.2004 application filed by the insurance company under Section 170 b of the MV Act 1988 was dismissed.

24. Needless to state, as noted above, it was followed by the award dated 6.10.2004.

25. Defence of the insurance company that the driver of

the offending vehicle did not possess a valid licence remained unsubstantiated.

26. Noting the aforesaid facts, it is evident that the counsel for the appellant is to be blamed for what has happened. Obviously, on the evidence on record, the award is correct.

27. I am not inclined to remit the matter for fresh trial pertaining to the issue whether the driver of the vehicle possessed or did not possess a valid driving licence for the reason it is too late in the day for the appellant to retrace their steps.

28. Even appellant has to be blamed for the reason, appellant has not discharged its obligation of seeking accountability from the counsel engaged.

29. The appeal is dismissed.

30. No costs.

31. LCR be returned.

May 11, 2007 PRADEEP NANDRAJOG, J.
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